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WILLIAM R. GUSTAVSON			EXAMINER	
SUITE 1185			FLANIGAN, ALLEN J	
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DALLAS, TX 75243			ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/650,335

Filing Date: August 28, 2000

Appellant(s): GIACOMEL, JEFFREY A.

MAILED
JUL 20 2005
GROUP 2800

William R. Gustavson
For Appellant

**SUPPLEMENTAL
EXAMINER'S ANSWER**

Responsive to the Reply Brief filed on 6/10/2004, a supplemental Examiner's Answer is set forth below solely in response to new issues raised therein: On page 3 of the Reply Brief, appellant now implies that Snyder fails to anticipate the claimed limitation of "at least two" input heat transfer elements

Art Unit: 3753

in parallel spaced planes. This argument is based on a mischaracterization of the Examiner's position and a mischaracterization of the teachings of Snyder. The sentence cited by the appellant reads, "Snyder shows an aluminum cooking apparatus with parallel ridges 310", and this is a fair and descriptive characterization of Snyder. One could be explicit in using the term "grid" employed in Snyder to state "Snyder shows an aluminum cooking grid with parallel ridges 310". 310 refers to the grid, not the individual unlabeled ridges. Moreover, Snyder clearly states in column 7 that "The grid 310 of Figs. 8 and 9 will be identical to the grid 10 of Fig. 1 and need not be discussed in detail". This grid structure is explicitly described in column 5: "The cooking grid 10 includes a series of upwardly extending peaks such as rails 10R, which rails are separated by a series of valleys constituted by channels 10C." It obviously was not necessary for Snyder to explicitly label corresponding rails or peaks 310R and channels 310C in the structure shown in Figs. 8 and 9 for one of ordinary skill in the art to recognize that the grid 310 has such features as shown in Figs. 8 and 9. Thus it is a clear misrepresentation to imply that Snyder fails to show structure responsive to the claimed "at least two input heat transfer elements", since the disclosed rails or peaks of Snyder clearly read directly on this claimed feature.

Regarding claims 31 and 35, appellant now asserts that in allegedly opting to be his own lexicographer, he has set forth a definition of the term "length" different from the ordinary meaning of this term and is therefore

entitled to have the claims narrowly construed. This is not persuasive. As set forth in MPEP, "An applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by *clearly setting forth a definition of the term that is different from its ordinary and customary meaning*" (emphasis added) . . . this must be done "with reasonable clarity, deliberateness, and precision" and, if done, must "set out his uncommon definition in some manner within the patent disclosure' so as to give one of ordinary skill in the art notice of the change" in meaning¹. In the section of the specification cited by the appellant, there is no such deliberate and clearly set forth definition serving to give notice of a different usage of the term "length"; indeed, on page 11 of the specification, appellant states that "a continuous extrusion of the fined assembly can also be made which would then be cut to the desired length". As seen in Figs. 2-3 of the drawings, cutting an extrusion to length clearly refers to the maximum dimension illustrated in Fig. 2, and this clearly is consistent with the Examiner's asserted meaning of the word "length" as encompassing the elongate dimension of rails 110R seen in Fig. 5 of Snyder (compare Fig. 5 of Snyder to Fig. 2 of the instant invention). This clearly agrees with the customary meaning of the term "length", i.e. the longest dimension of a particular structure, relied upon by the Examiner in interpreting the claims. Thus, it is clearly improper for appellant to engage in a *post hoc* attempt to

¹ See *In re Paulsen*, 31 U.S.P.Q. 2d 1671, 1674, quoting Intellicall, Inc.

redefine the invention by asserting the existence of some clear definition contrary to the ordinary meaning of length that simply is not present in the specification.

Regarding claim 11, Appellant now asserts that Reed fails to show a removable handle. This is an astonishing assertion given the clear showing of the handle assembly being removably provided as shown in Figs. 10 and 13-15 and described in columns 7-8 of Reed. Indeed, the abstract of Reed specifically states that "A device with a handle is provided for releasably engaging the cooking appliance".

Regarding claim 2, Appellant now asserts, "Reed teaches away from a nonstick coating" in that "the fact that Reed does not specify such a coating is evidence that it teaches away from such a coating". It hardly needs to be pointed out that the failure of a single reference to teach a particular limitation cannot be construed as a "teaching away". By such a construction of patent law, no rejection under 35 U.S.C. 103 for obviousness based on a combination of evidence or teachings would be possible.

Appellant may file another reply brief in compliance with 37 CFR 41.41 within two months of the date of mailing of this supplemental examiner's answer. Extensions of time under 37 CFR 1.136(a) are not applicable to this two month time period. See 37 CFR 41.43(b)-(c).

Respectfully submitted,



Allen J. Flanigan
Primary Examiner
Art Unit 3753

AJF

A Technology Center Director or designee has approved this supplemental examiner's answer by signing below:



Gene Mancene
Supervisory Patent Examiner
Group 3700



RICHARD A. BERTSCH
DIRECTOR
TECHNOLOGY CENTER 3700